IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/02/2004

CORAM

THE HON'BLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HON'BLE MR.JUSTICE M.KARPAGAVINAYAGAM

W.P.No.3557 of 2000

K.Jayaprakash ..Petitioner

-vs-

1.Union of India,
rep. By General Manager,
Southern Railway,
Chennai-3.

2.The Chief Personnel Officer,
Southern Railway,
Chennai-3.

3.T.Arunachalam
4.S.Balakrishnan
5.C.Baskaran
6.K.Ganesan
7.S.Narayanan
8.G.Padmanabhan
9.A.N.Shafi Hussain
10.S.Sivalingam
11.C.Srilatha Ragothaman
12.N.Sundararaman
13.P.Sundarvel
14.V.Sivasamy

15.The Registrar,
The Central Administrative Tribunal,
Chennai Bench, Chennai. ..Respondents

Petition filed under Art.226 of the Constitution of India, praying for the issue of writ of certiorarified mandamus calling for the records pertaining to the order of the 15th respondent herein in O.A.No.16 6/99, dated 9.11.1999 and quashing the same and consequently quashing the order No.P (S)608/III/62/LA, dated 24.2.99 of the 2nd respondent and also directing respondents 1 and 2 to conduct fresh selection to the post of Law Assistants

without calling for further volunteers in Southern Railway.

!For Petitioner : Mr.P.N.Prakash

^For RR-1 and 2 : Mr.R.Thiagarajan,
Senior Counsel for
Mr.V.G.Sureshkumar

For RR-4,6, 7 & 10 : Ms.Aparna Nandakumar
For RR-8, 11 to 14 : No appearance

:ORDER

(The order of the Court was made by R.JAYASIMHA BABU, J.)
This is an unusual petition wherein the applicant for the post of Law Assistant seeks invalidation of the select list on the ground that the answer scripts were not valued by an officer belonging to the Department in which, according to the applicant, the post is. That Department is said to be the Commercial Department. Reliance is placed upon the Indian Railway Establishment Manual, Vol.I, which refers the post of Law Assistant among the posts in the Commercial Department and which also provides that the channel of promotion for the post of Law Assistant is that of Chief Law Assistant.

2. The notification inviting applications was issued in April 1998. That notification does not refer to the post being one in the Commercial Department. It is merely captioned as "Selection for the post of Law Assistant". It invites applications from employees serving in any Branch of the Railways, the selection being on "All Railway Basis". The applicant was put on notice that he should have at least five years of non-fortuitous service in the Railway and that he should possess a B.L. Degree. The applicant in order to have a place on the selection panel must, in addition, undergo a written test and viva voce test, only those qualifying in the written test being called for the viva voce test. That notification also sets out that the Law Assistants have their own regular channel of promotion.

3. In addition to the entry "Law Assistants" among the posts in the Commercial Department, instructions are contained in paragraphs 218 and 219 of the Indian Railway Establishment Manual, 1989, which inter alia provide that when recruitment is made to a post in any Department of the Railways, the selection Board should comprise of at least three persons two of whom shall be from the Department in which the post is. It also provides that the question paper must be set by one of the members of the Selection Board and the answer books should invariably be valued by a member of the Selection Board who is also an officer of the Department for which the selection is held.

4. In this case, the Selection Board consisted of two officers from the Commercial Department and the Personnel Officer who did not belong to the Commercial Department, but a different Department. The question paper was set

by one of the officers from the Commercial Department. The valuation was done by the Personnel Officer. It may be mentioned here that all the members of the selection board had the B.L. degree and had a background in law.

5. The answer scripts were thus valued by a person who had knowledge of law and who was competent to value the answer sheets. Nothing wrong in his valuation is alleged. It is his legal competence to value those papers that is being questioned.

6. If the premise on which the petitioner's claim is based is that the selection was for a post in the Commercial Department, that premise is not one which can be said to be sustainable as the notification does not anywhere refer to "Commercial Department". It only invites applications for the post of Law Assistants. The fact that two officers of the Commercial Department sat on the selection Board does not on that score alone make this a post in the Commercial Department.

7. The Senior Personnel Officer of the Railways has filed an affidavit before us wherein he has stated that the Law Assistants selected both under direct recruitment as well as promotional quota are posted to work in the Headquarters office (Commercial Claims Office, General Law Branch), Construction Branch, Railway Rates Tribunal and Integral Coach Factory and also in Division offices. The maximum number of Law Assistants were working in Commercial Claims Office to deal with claim cases before the various city Courts till the establishment of the Railway Claims Tribunal. As most of the Law Assistants are working in the Claims Branch for the Administrative Purpose they were brought under the control of Chief Claims Officer/Chief Commercial Manager of Commercial Department. However, 3 to 4 Law Assistants were working under the control of Law Officer in General Branch to deal with all the matters viz. Establishment, Contracts, Law, Property, Family Law, etc, except the claim cases.

8. The notification in this case does not state that the recruitment of Law Assistants was only for the purpose of dealing with claim cases in the Commercial Department. The Law Assistants recruited pursuant to this notification were liable to be posted anywhere, whether in the general branch or the Commercial Department or other places wherein the services of Law Assistants were required by the Railways. Law Assistants had separate channel of promotion and, irrespective of the Department in which they were placed, they were not to be promoted for the post other than that in law available within the Department. That is the reason why the recruitment was on "All Railway Basis" and none of the applicants were allowed to carry the seniority earned by them prior to their selection as Law Assistants, after they entered the cadre of Law Assistants.

9. Even assuming for a moment that it is possible to sustain the claim of the petitioner that it is a post in the Commercial Department, we do not see anything illegal in the Senior Personnel Officer valuing the answer scripts as his qualification and competence to do so is unquestioned. The fact that he is a member of the Selection Board is not in dispute. He was certainly competent, being a member of the Selection Board, to set or value

the question paper. The reference in the instructions that the answer scripts should invariably be valued by an officer from the Department and who is on the Selection Board is not so rigid a rule as to shut out a member of the Selection Board who is not an officer from the Department for which the selection is made, and prevent him from valuing the answer scripts, if he is otherwise qualified and competent to do so.

10. We do not see any merit in the writ petition. The same is accordingly dismissed.

Index: Yes

Website: Yes

To

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Chennai-3.

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Chennai Bench,
Chennai1-4.

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